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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/036,571	11/09/2001	Wayne M. VanLandingham	P04853US0	4035

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EXAMINER

HARRIS, ERICA B

ART UNIT	PAPER NUMBER
3634	

3634

DATE MAILED: 03/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Applicati n N .	Applicant(s)	
10/036,571	VANLANDINGHAM, WAYNE M.	
Examiner	Art Unit	
Erica B Harris	3634	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 15 December 2003.
- 2a) This action is FINAL.
- 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-19,22 and 23 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) 15-19 is/are allowed.
- 6) Claim(s) 1-14,22 and 23 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 15 December 2003 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____

DETAILED ACTION

Specification

1. The disclosure is objected to because of the following informalities: the newly added Figures 8-11 are not referenced in the detailed description of the specification. Appropriate correction is required.

Drawings

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the pairs of tines in a common horizontal plane (claims 1, 22, and 23) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Objections

3. Claim 15 is objected to because of the following informalities: in line 5, "rewardly angled" should be --rearwardly angled--. Appropriate correction is required.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

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The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 1-7, 22, and 23 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. These claims set forth that the pairs of tines have lower ends in a common horizontal plane, but this was not disclosed in the specification nor is it shown in the drawings.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-14 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Fiocca et al.* (3,752,322) in view of *Finola et al.* (5,601,195). In Figures 1-4, *Fiocca* illustrates a dishwasher rack 20 comprising a bottom; a front; a back; and opposite sides, each of which are formed from a plurality of rods 24 and 26 that extend across the bottom of the rack and up each side. The rack further comprises first and second horizontal legs 37 extending along the bottom; a plurality of stepped tines 38 extending from each of the first and second legs; both of the legs 37 being pivotally mounted on the bottom such that the tines thereon are foldable between upright and lowered positions; and a clip member 45 adapted to engage one of the foldable tines

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43 to hold the foldable tines in a position between the upright and lowered positions. The tines 38 on the first leg 37 are independently foldable with respect to the tines 38 on the second leg 37 such that they pivot in opposing directions. Clip member 45 further includes a plurality of protrusions 52,54 that are adapted to receive an arm 43 on the one foldable leg 37 to hold the tines 38 in a selected position. The lower ends of the tines on one leg are fixed relative to the tines on the other leg and the upper ends of the tines of the respective legs are spaced progressively farther apart from one another as one or both of the legs are pivoted to fold the tines thereon from the upright position to the lowered position.

Finola *et al.*, in Figure 1, dishwasher rack 1 comprising a bottom; a front; a back; and opposite sides. The rack further comprises first and second horizontal legs 6 extending along the bottom in a common horizontal plane; a plurality of tines 7 extending from each of the first and second legs such that the tines are free from obstruction between the upper and lower ends thereof; both of the legs 6 being pivotally mounted on the bottom such that the tines thereon are foldable between upright and lowered positions; and a clip member 8 adapted to hold the foldable tines in either an upright or a lowered position. The tines 7 on the first leg 6 are independently foldable with respect to the tines 7 on the second leg 6. The lower ends of the tines on one leg are fixed relative to the tines on the other leg and the upper ends of the tines of the respective legs are spaced progressively farther apart from one another as one of the legs is pivoted to fold the tines thereon from the upright position to the lowered position. To one of ordinary skill in the art at the time the invention was made, it would have been obvious to control the pivotal movement of an adjacent set of tines of the rack of Fiocca *et al.* with an identical clip member, as taught by Finola *et al.*, and oriented to enable the tines of the adjacent set continue to

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fold in their current direction such that the tines of each set could be adjusted to mirror each other and to provide tines that are free from obstruction between the upper and lower ends thereof, as also taught by Finola *et al.*, in order to enable items such as plates to be retained between adjacent pairs of tines.

Allowable Subject Matter

8. Claims 15-19 are allowed.

9. Claim 23 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

10. The following is a statement of reasons for the indication of allowable subject matter: These claims have been allowed over the prior art of record because the prior art of record neither teaches nor suggests a dishwasher rack comprising the combination set forth in claim 15 with particular reference to the pivoting movement of the tines causing the tilt of a tall object to increase or decrease with the adjustment of said tines. While Fiocca *et al.* and Finola disclose dishwasher racks *per se*, there is no teaching nor suggestion to combine the prior art of record to achieve applicant's invention absent applicant's own disclosure.

Response to Arguments

11. Applicant's arguments filed December 15, 2003 have been fully considered but they are not persuasive.

With respect to applicants arguments regarding the combination of *Fiocca et al.* and *Finola* to reject claims 1-20, the examiner maintains that the rejection is proper of claims 1-14 and newly added claim 22. Applicant argues that there is no suggestion or motivation to combine the teachings of *Fiocca et al.* and *Finola*, however, it is well-known to remove unnecessary elements and *Finola* simply illustrates tines without the obstructive member. Since the *Finola* patent issued in February of 1997 and the *Fiocca et al.* patent issued in August of 1973, it is further obvious that others have found that the obstructive member is removable such that plates may be mounted between the pair of tines.

Further, with respect applicant's remarks concerning the modification to place the lower end of the tines in a common horizontal plane, it is noted that the tines of applicant's rack are not in the same horizontal plane in the figures, nor are they disclosed to be in the original specification.

With respect applicant's remarks concerning whether both sets of tines in *Fiocca et al.* are foldable, the examiner directs applicant to column 4, lines 1-12, where it is disclosed that the set 34 of tines is foldable in a counter-clockwise direction and Figure 2 illustrates that the set 36 of tines is foldable in a clockwise direction.

Conclusion

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Erica B Harris whose telephone number is 703-306-9071 and email address is Erica.Harris@uspto.gov. The examiner can normally be reached on 9-5:30 M-F.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P Stodola can be reached on 703-308-2686. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Erica B. Harris
March 20, 2004



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SUPERVISORY PATENT EXAMINER
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